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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,343	02/26/2002	Kenichi Ueyama	219735US3	4098

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EXAMINER

COMSTOCK, DAVID C

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/082,343	Applicant(s) UEYAMA ET AL.	
	Examiner David Comstock	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 3-7, 10-14, 19 and 21 is/are allowed.
6) ☒ Claim(s) 1, 2, 8, 9, 15-18 and 20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 26 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Viltro et al. (5,837,005).

Viltro et al. disclose a warming pad 10 of sheet form having a plurality of heating parts 16 in the center thereof and a margin around the heating parts, i.e. the border around each of the heating parts 16 (see Figs. 1, 2, and 4; col. 3, line 34). The heating part includes an oxygen (from ambient air) activated heat generating material 18 which contains iron powder, activated charcoal, vermiculite (a moisture-retaining element), water, and salt (i.e. sodium chloride) (see col. 2, lines 29-32). The pad is capable of being wrapped around a user's hair with either the release paper still attached or in the embodiment with alternative fastening means, since the sheet is flexible and of a generally appropriate size, (see Figs. 1 and 2; col. 3, lines 55-57; and col. 4, lines 15-34). Release paper is a flexible material and is water resistant, since it is coated with wax or the like to protect the adhesive while still being readily releasable.

Claim Rejections - 35 USC § 103

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Viltro et al. (5,837,005) in view of Ono (WO 99/51174).

Viltro discloses the claimed invention except for the water-absorbent polymer. Ono discloses that moisture-retaining elements (of which vermiculite is one) "can contain a variety of components such as vermiculite, calcium silicate, silica gel, silica porous substances, alumina, pulp, wood powder, water-absorbing polymers, etc." as appropriate (see page 14, lines 15-20). Thus, it would have been obvious to substitute some or all of the vermiculite for an amount of water-absorbing polymers, in view of Ono, since this amounts to nothing more than the substitution of functionally equivalent moisture-retaining elements known in the art. It would have been further obvious to provide each of the components in the amount of approximately: 40-60% iron powder, 1-3% sodium chloride, 1-5% activated carbon, 3-5% water-absorbent polymer, and 3-10% vermiculite; since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claims 16-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viltro et al. (5,837,005).

Viltro discloses the claimed invention except for explicitly disclosing a heat-generating material in an amount of approximately 0.05-0.3 g/cm² of the heating part (claim 16) or explicitly locating the heating parts between 3-15 cm from the edge of the warming tool over the periphery thereof (claim 17). It would have been obvious to provide the heat-generating material in an amount of approximately 0.05-0.3 g/cm² of

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the heating part, and to locate the heating parts between 3-15 cm from the edge of the warming tool over the periphery thereof, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. With regard to claims 18 and 20, it also would have been obvious to form the water resistant material of synthetic resin, paper, metal, or a non-woven fabric, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

Applicant's amendment filed 28 March 2006 has been fully considered but does not overcome the rejections.

The new limitation that the outermost base sheet be permanently fixed to the hair warming tool amounts to a statement of intended use—at least as presently phrased. It is noted that Viltro is capable of satisfying this limitation since the device need not ever, necessarily, be used. That is, the pad includes an outermost sheet that is affixed thereto, and if the device is never used, the outermost sheet is effectively permanently fixed to the device.

With regard to Applicant's arguments regarding Ono, it is first noted that Ono does not teach against a waterproof layer since water vapor is comprised of smaller molecules than those of water in a liquid state; thus, the material is not precluded from being water-resistant simply because steam may pass therethrough. In addition, Ono simply demonstrates that the noted materials are known substitutional equivalents. Thus, knowing these equivalents, a person of ordinary skill in the art would find it obvious to substitute one for the other as appropriate or desired.

Allowable Subject Matter

Claims 3-7, 10-14, 19 and 21 are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. Comstock



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER